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In The Supreme Court of The United States

OCTOBER TERM, 1944

No. 462

J. F. FITZGERALD CONSTRUCTION COMPANY,
Petitioner,

vs.

CHRIS PEDERSEN, *Individually and as Agent and Representative for and in behalf of himself and all employees of the defendant similarly situated,*

Respondent.

MOTION FOR EXTENSION OF TIME

HENRY E. FOLEY,
Counsel for Petitioner

Dated: November 24, 1944

GEORGE H. DEAN CO., PRINTERS, BOSTON

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Now comes J. F. Fitzgerald Construction Company, your petitioner, by Henry E. Foley, its counsel, and respectfully represents to this Honorable Court as follows:

1. On September 13, 1944, your petitioner filed herein a petition for writ of certiorari to the Supreme Court of the State of New York for the purpose of obtaining review and determination of a judgment entered in said Court, upon remittitur from the Court of Appeals of the State of New York, in an action originally commenced by the respondent herein in said New York Supreme Court to recover overtime compensation and liquidated damages in accordance with the provisions of Section 16 (b) of the Fair Labor Standards Act of 1938, a Federal statute. In

said petition your petitioner requested consideration and review of the following two questions:

(1) Whether the entry of judgment for the plaintiffs by the Supreme Court of the State of New York on the record before it (which wholly fails to show the nature of the work done by any plaintiff at any time, except merely that your petitioner entered into a contract for the reconstruction and repair of certain bridges of an interstate carrier and that the plaintiffs and others were employed by your petitioner "in doing work" under that contract) is in conflict with the decisions of this Court and constitutes a violation of the prior mandate of this Court.

(2) Whether interest may be added to the statutory double damages in making an award to employees in an action under Section 16 (b) of the Fair Labor Standards Act of 1938.

2. On November 6, 1944, this Court granted your petitioners said petition for writ of certiorari, but limited said grant to the second question presented by said petition. The terms of the order of this Court are as follows:

> "The petition for writ of certiorari is granted limited to the second question presented by the petition for the writ and the case is transferred to the summary docket and assigned for argument immediately following No. 421. The Solicitor General is invited to file a brief amicus curiae in this cas and in No. 421 (Arsenal Building Corporation v. Greenberg, October Term, 1944) if so advised."

3. Since the entry of the order of this Court, on November 6, 1944, your petitioner has caused to be filed in the Court of Appeals of the State of New York a petition seeking amendment of the remittitur of said Court so as to state more explicitly the ground of its decision and so as more fully to reveal that in issuing said remittitur said court had necessarily passed upon a question of federal law which your petitioner believes is an important federal ques-

tion which should be reviewed by this Court. Said motion was filed in said Court of Appeals on November 13, 1944, and thereupon an order was entered by said Court directing the respondent herein to show cause on November 20, 1944 why said Court should not enter an order requesting a return of its remittitur and that said remittitur be amended. Said motion is now under consideration by said Court. It is anticipated that decision will be rendered on November 30, 1944.

4. Your petitioner wishes to file herein (a) a motion requesting that this Court's limitation upon its grant of certiorari, hereinbefore referred to, be stricken, and that the cause be removed from the summary docket, and (b) a short and concise brief in support of said motion. Your petitioner, however, is advised that such motion and brief must be filed on or before December 1, 1944, unless an extension of the time for the filing thereof be obtained.

5. In view of the fact that decision has not yet been announced by the Court of Appeals of the State of New York upon your petitioner's motion, hereinbefore in paragraph 3 hereof referred to, your petitioner does not believe that said motion and brief, hereinbefore in paragraph 4 hereof referred to, directed to this Court can be adequately prepared and printed within the short period of time which will be remaining between the time of decision by the Court of Appeals and December 1, 1944, and accordingly your petitioner wishes to obtain an extension to December 15, 1944, of the time within which such motion and brief may be filed.

6. Your petitioner affirms that this motion and the aforementioned motion and brief which your petitioner intends to file are and will be filed in good faith and not for purposes of delay, and in the latter connection states that the

office of the Clerk of this Court has advised your petitioner that argument of the cause referred to in this Court's present order with respect to certiorari will probably not be had until February, 1945.

WHEREFORE, your petitioner respectfully prays that the time within which your petitioner may be permitted to file herein a motion to strike from this Court's order herein, dated November 6, 1944, the limitation upon the grant of certiorari contained therein and the portion thereof transferring this cause to the summary docket, together with a concise brief in support of such matter, be extended to December 15, 1944.

Respectfully submitted,

HENRY E. FOLEY
Counsel for J. F. Fitzgerald Construction Company.

Dated: November 24, 1944.